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Texas Lawmakers Propose End to Jail Time for Inability to Pay Fines

Texas Supreme Court Chief Justice Nathan L. Hecht and the chair of the Texas House Corrections Committee are seeking to

dismantle the state's practice of jailing a person for being unable to pay a fine, because it violates the US and state constitutions, costs the state, and traps thousands of the state's poorest residents in a cycle of debt. According to Hecht, more 640,000 minor offenses resulted in defendants serving time in jail for nonpayment of fees or fines in 2016. Seven million such cases produced more than \$1 billion in fine revenue for the state when defendants could avoid jail by paying the fines. Opposition to the practice is based on the Texas state constitution, which states that, "No person shall ever be imprisoned for debt."

A recent [report from the Texas Appleseed and Texas Fair Defense Project](#) has strengthened the case for making changes to current law. The report points out that more than 75% of fine-only offenses in the state are for traffic violations, but that they can be for as minor an offense as jaywalking or having a broken headlight. For low-income Texans, failure to pay the fine can lead to devastating consequences for the individual and for the family and community. Once a fine is not paid immediately, the cost compounds over time and frequently results in additional tickets, fines and fees. These practices often result in the suspension of or inability to renew driver's licenses or to register vehicles. Fine-only offenses can lead to arrest warrants either because a person fails to appear for a court date or because a person fails to pay the fines or fees. Failure to appear can occur for a number of reasons including lack of transportation, employment, lack of understanding of the

court system, or fear of arrest. Failure to appear in court is a separate crime, which often leads to another fine-only charge and additional fines and court costs. When charging an individual with a Failure to Appear offense, the court typically issues a warrant for the person's arrest.

Other key findings of the report include:

- In the most recent year with complete data (2014), 11.4% of a sample of county jail bookings for fine-only offenses lasted more than two days. Within the seven counties, 638 lasted more than 10 days.
- In five counties that provided data on race, African Americans were significantly overrepresented in jail bookings for fine-only offenses compared to their representation in the county population. In Lubbock County, for example, African Americans represented 22.7% of bookings, but just 7.8% of the county population.
- In these same five counties, 25% of arrests for fine-only offenses involved poverty-related traffic offenses, like driving on a suspended license or having an expired inspection sticker.
- The authors reviewed the case files of 50 individuals who had been committed to jail by the Houston Municipal Court and found that, in conflict with US and Texas law, there was not a single written determination that any individual was able to pay their fines prior to jail commitment. At least half of these individuals had addresses listed as "homeless" in court records.
- The authors were unable to find any court in Texas that provides appointed counsel to individuals in fine-only cases who face jail for nonpayment of their fines, despite a US Supreme Court ruling (in *Argersinger v. Hamlin*) that indigent defendants cannot be imprisoned for any criminal offense unless they have been provided with the opportunity to have counsel appointed at the trial stage of their case.

To address these issues, state Representative James White has introduced [House Bill 1125](#), which prohibits judges from sentencing individuals to jail for the failure to pay fines or costs for an offense punishable by only by a fine, or for contempt of a judgment for the conviction of an offense punishable only by fine. That bill has bipartisan support, but has not yet been assigned a committee in the House.

Drug Testing on the Rise for Unemployment Benefits and for Public Assistance

The US House of Representatives [voted on February 15 to repeal a drug-testing restriction](#) contained in a Department of Labor rule that limited which workers state governments can drug test as a condition of receiving their unemployment benefits. The Senate can now approve the repeal with a simple majority, and if the repeal is supported by the Trump administration, states would gain wide authority to drug test people who are unemployed.

The move was opposed by almost 50 labor and civil rights groups in [a letter](#) arguing that repeal of the rule would:

- allow states to waste taxpayers dollars on drug testing already performed by employers;
- punish working families that are trying to get back on their feet;
- deprive workers of their right to a benefit that is largely paid for through paycheck deductions; and
- likely violate the Fourth Amendment because it provides for suspicionless drug testing of government benefit recipients.

The push for drug testing at the federal level is in line with similar efforts in the states, where drug-testing requirements for an expanding range of assistance programs are either in place or have been introduced as legislation. [The list of states adding such provisions has grown dramatically in recent years.](#) Prior to 2011, few state efforts to establish drug-testing requirements succeeded in state legislatures. Since 2011, however, following the lead of three states—Arizona, Florida, and Missouri—a new wave of states have been passing drug-testing legislation that applies to groups of TANF applicants or recipients. By the end of March 2016, at least 17 states had proposals to provide for substance abuse and drug testing for welfare programs. Among the recent state proposals:

- A bill (House Bill 528), introduced this week in [Kentucky](#), would require the state to "implement a substance abuse screening program for adult persons receiving or seeking to receive monetary public assistance, including food stamps or assistance under the state medical assistance program."
- [Maine](#) Governor Paul LePage is proposing an end to the department's current drug-testing policy in favor of the harsher policy of banning food stamps and cash assistance for anyone convicted of a drug felony in the past two decades. (In the most recent data provided by state officials, a total of one Maine welfare recipient tested positive for drugs from April through June 2015.)
- In [Arkansas](#), a two-year pilot drug-screening program required applicants who claimed they were on illegal drugs or who may have lost their job due to drugs to take a drug test. The pilot might become a permanent program for those applying to TANF under Senate Bill 123, which has passed the Senate and is being considered in the House.
- And in [Rhode Island](#), Republican state Sen. Elaine Morgan has proposed legislation that would revoke welfare assistance for up to a year if an applicant or recipient tested positive for controlled substances.

Positive results (in which evidence of drug use is found) from such drug-testing requirements appear to be rare. A [ThinkProgress survey of 10 states with drug testing](#) in place last year found that implementing the requirements is expensive and most often ineffective. The states were found to have spent \$850,909.25 on the testing in 2015 to uncover just 321 positive tests, and more than one state produced no positive results at all.

A [recent news report](#) in North Carolina, for example, found that from 2015 to 2016 under the state's drug-testing law, 30,000 state public assistance applicants were screened for drug use and 400 were required to be tested based on the screening. Of those screened, less than 1%, or 50, tested positive for drugs. The results have caused some state lawmakers to rethink their assumptions about the poor. State [Rep. D. Craig Horn \(R\) assumed testing welfare applicants would reveal higher rates of drug use](#) than is true for the general population. Instead, it showed a lower rate. "I was frankly surprised. I had expected different numbers. Hopefully it's a good indicator," he said. "I'll listen carefully to how people analyze it and hope we can learn from it. Sometimes our preconceived ideas may not be on as solid ground as we thought." And [recent data on its drug-testing program provided by the Tennessee Department of Human Services to The Tennessean](#) show similar results. Over the last 18 months, Tennessee has screened 39,121 people, drug-tested 609, and found just 65, or .16 percent of the total applicant pool, who tested positive.

Nonresident Fathers' Involvement With Children is Compromised by Child Support Debt

A new study in the *Journal of Marriage and Family* provides new evidence of

the effect of child support debt on a father's involvement with his children. According to the authors of the study, it is the first to provide a descriptive portrait of how and why child support debt may be linked to fathering when fathers are experiencing poverty. Low-income, noncustodial parents owe a disproportionate amount of the \$114.5 billion in child support arrears nationally, and prior studies have shown that 70% of child support arrears are owed by parents who had no reported income or incomes of less than \$10,000.

More than 1,000 fathers with 9-year-old children were in the study's analytic sample, drawn from the Fragile Families and Child Wellbeing Study, a longitudinal survey of 4,897 urban births between 1998 and 2000. That study conducted interviews with fathers and mothers just after birth, and 1, 3, 5, and 9 years after birth. More than 30% of the study sample of nonresident fathers reported having child support-related debt. The average amount of the debt was \$7,705.

Some key findings of the study include:

- Nonresident fathers with child support arrears were less involved with their 9-year-old children on the three father-involvement measures evaluated in the study: number of days with the child, engagement in activities with the child, and in-kind support for the child.
- Child support arrears were strongly associated with seeing their children fewer days. On average, nonresident fathers with child support arrears saw their children 3 fewer days per month than did nonresident fathers without arrears.

- Fathers with arrears reported poorer relationship quality with the biological mother of the child, compared to fathers without arrears.
- Fathers with arrears had depression rates that were about 27% higher than those without arrears on a depression scale.
- The number of weeks worked by a father in the sample was not related to the amount of time spent with a child, but fathers with arrears worked on average 5 fewer weeks per year than did fathers with no arrears.
- Fathers with arrears had lower levels of educational attainment and were more likely to have children by multiple partners and to have experienced a period of incarceration.
- Child support enforcement tools aimed at collecting on arrears, such as incarceration, license revocation, and tax intercepts, affect the most disadvantaged fathers disproportionately and may explain the resulting strain on fathers' relationship with mothers, a strain that may lead to fathers avoiding households where their children live or that make mothers less inclined to interact with the father.

The report, *Indebted Relationships: Child Support Arrears and Nonresident Fathers' Involvement With Children*, is authored by Kimberly Turner and Maureen Waller, and is available at <http://onlinelibrary.wiley.com/doi/10.1111/jomf.12361/epdf>

Children of Incarcerated Parents Suffer Worse Educational Outcomes

A recent [study from the Economic Policy Institute](#) reviews a range of studies that together show that parental

incarceration leads to an array of cognitive and other outcomes known to affect children's performance in school and that contribute significantly to the racial achievement gap.

Approximately 700 of every 100,000 individuals in the US population are currently in jail or prison, a rate that surpasses all other modern countries. The rate, for example, in Russia is 450 per 100,000, and in Canada the rate is 100 per 100,000. In the United States, the current rate has grown to 700 from 160 per 100,000 in 1970, and black men are incarcerated at six times the rate of white men. One in three African American men will be imprisoned at some point in their lives. All of this means that by the age of 14, approximately 25 percent of African American children have experienced a parent, in most cases a father, being imprisoned for some period of time, while the comparable rate for white children is 4 percent. Key findings of the study include:

- Children with incarcerated parents are 33 percent more likely to have speech or language problems than otherwise similar children whose fathers have not been incarcerated.
- It is more common for children of incarcerated parents to drop out of school than it is for children with parents who are not incarcerated. Adolescent boys between the ages of 11 and 14 with a mother behind bars are 25 percent

more likely to drop out of school, and they are 55 percent more likely to drop out of school because they themselves have been incarcerated.

- Paternal incarceration itself is the likely cause of children completing fewer years of education than children of never-incarcerated fathers.
- Children of parents who have been incarcerated are more prone to learning disabilities, are 48 percent more likely to be diagnosed with ADHD, are 23 percent more likely to suffer from developmental delays, and are 43 percent more likely to suffer from behavioral problems than are children whose parents were never behind bars.
- Children of incarcerated fathers are a quarter to a third more likely than children of nonincarcerated fathers to suffer from migraines, asthma, and high cholesterol, are 51 percent more likely to suffer from anxiety, 43 percent more likely to suffer from depression, and 72 percent more likely to suffer from post-traumatic stress disorder.
- Children of incarcerated parents are likely to be unsupervised more often than children of nonincarcerated parents, and the remaining parent is likely to need to work longer hours and have less time available for monitoring children. Incarceration can also create instability in their parents' relationship, putting children at higher risk of misbehaving in class and being suspended or expelled.
- Homelessness is also more common among children of incarcerated parents, and the homelessness risk is especially pronounced for African American children of incarcerated fathers. Unstable housing and shelter means that nonincarcerated family members are more likely to be victims of crime. Children who are homeless are more likely to do worse in school than otherwise similar children who are not homeless.

The authors recommend that educators join forces with criminal justice reformers, at the local and state, if not the federal, level to:

- eliminate disparities between minimum sentences for possession of crack vs. powder cocaine;
- repeal mandatory minimum sentences for minor drug offenses and other nonviolent crimes; and
- increase funding for social, educational, and employment programs for released offenders.

Criminal Background Checks Create Obstacles to Employment

A recent [report from the Urban Institute](#) looks at criminal background checks requested by employers to inform their hiring decisions and examines them according to the type of background check and the ways in which the checks restrict access to an already limited number of jobs available to people with criminal records. There are two main types of criminal background checks used by employers: one requires job candidates to submit fingerprints that are then compared to an FBI database, and the other is conducted

by commercial vendors and compares information about the job candidate to public records.

The report also compares the job performance of people with and without criminal records and explores the impact of employment on recidivism. As pointed out in the report, anyone who has come into documented contact with the criminal justice system has a criminal record, whether or not there has been actual criminal conduct. It is possible to have a criminal record because of an arrest that never led to a charge or conviction. According to the report:

- Among US employers, 72 percent use background checks. Of these, 82 percent conduct criminal background checks. These high rates reflect employers' increasing use of background checks to satisfy requirements to be bonded and insured.
- Between 2010 and 2014, the use of criminal history records for noncriminal justice purposes increased 22 percent, with 30 million records provided.
- Criminal background checks often generate flawed or incomplete criminal history reports or inaccurately pair identification data. Criminal history reports can include convictions that occurred in the distant past (potentially violating federal statutes that limit records checks to the previous seven years), records that have since been expunged, or offenses that are not relevant to the job for which candidates are under consideration. As a result of those potentially misrepresentative reports, employers may unintentionally exclude qualified candidates.
- The shortcomings of criminal records place unnecessary challenges in the way of many job candidates already at a disadvantage when seeking work after having contact with the criminal justice system.
- Because one in three US citizens has a criminal record, the problems with background checks have implications for the labor market, as well as for local economies and public safety.
- One of the most significant limitations of fingerprint-based checks is that many records submitted to the FBI do not report a court's final ruling on the case, also known as the case disposition. FBI data from 2016 revealed that only 49 percent of arrests have matching dispositions, and 2014 survey data reveal wide variation across states, with Mississippi reporting case dispositions on only 14 percent of its arrests, while Maryland reported case dispositions on 98 percent of its arrests.
- One study examined 75 major counties across the country and found that as many as one-third of all arrests with felony charges did not result in convictions. Although employers are not legally entitled to take into account criminal background reports with missing disposition data, in practice, the burden often falls on the prospective applicants themselves to correct errors in their records, file grievances, or pursue legal actions against employers, not always a feasible solution within a short hiring time frame.
- For background checks conducted by commercial vendors, the biggest limitation is that the accuracy of the information varies greatly by vendor.

Significant gaps exist in commercial databases because some companies do not update their databases regularly, resulting in updated case dispositions that are not included in consumer reports, and expunged or sealed records that are incorrectly included on reports.

- Although 34 states and Washington, DC, as well as 150 larger metropolitan areas, have adopted “ban the box” regulations, evidence on their effectiveness is mixed because there are unintended consequences that appear to disproportionately affect black applicants. Other evidence indicates the policy is achieving its goals, but the authors point out that even when criminal records are not reported on applications, the option of running a criminal background check still exists.
- There is little empirical evidence to suggest that employees with criminal records are less productive or have a worse job performance than people with similar skill sets but with no criminal record.
- Research indicates that the risk of returning to prison is significantly reduced when a person finds employment, and that when a job is found shortly after release from prison, reincarceration is less likely. The odds of returning further decrease as pay and job stability increase.

State Policy and Practice News

- [A New Hampshire bill would restrict food stamp eligibility](#) for people who have a gross family income greater than 130 percent of the federal poverty level (\$2,184 per month for a family of three) and who have savings of more than \$2,250. The bill would also eliminate “expanded categorical eligibility,” a mechanism within the food stamp law that allows families whose earnings exceed the income limit to receive food assistance while still allowing for basic expenses such as child care.

A child support provision in the bill would require individuals to cooperate with the Division of Child Support Services, and require custodial parents who seek food stamp assistance to identify the noncustodial parent.

Sarah Mattson Dustin, policy director for New Hampshire Legal Assistance, described the bill as “...directed at struggling working poor families with children. They’re working, but they still can’t make ends meet with the high cost of basic needs. The need for food is the most basic of human needs.”

- In another state proposal to link child support and food stamp receipt, a **South Dakota** legislative panel has approved [House Bill 1191](#), a bill that would require cooperation with the state Division of Child Support as a condition of eligibility for the SNAP (food stamp) program. Opponents of the bill have noted that requiring applicants to begin the process of requesting child support could endanger custodial parents and children who have separated from the [non]custodial parents. One advocate for families

stated: "Taking away food from hungry children is not a response that I want to see happen in our state."

- [A new policy in Wisconsin](#) requires that any SSI payments received by a dependent child in a family applying for W-2 benefits must be disregarded in determining the financial eligibility of the family. Until the implementation of this policy, Wisconsin is one of only a few states in the country to count the Social Security Income (SSI) of a dependent child as part of a family's income when determining eligibility for W-2 (as the TANF program is known in the state) benefits. In courts around the country, however, rulings have determined that a child's income from SSI is meant exclusively for the use and benefit of the child and should not be considered income for the parent of the child. In response to these rulings, the state's Department of Children and Families has determined that the current policy is outdated, and has issued an Operations Memo that announces the change to W-2 financial eligibility policy.
- In **New Jersey**, a new law has gone into effect that [automatically terminates child support without the necessity of a formal court order when a child reaches the age of 19](#), enters military service, gets married, or passes away. The law would apply to all children at age 19 unless another age for termination of child support is specified in a court order (although the statute implements a hard cap, providing for termination upon a child's turning age 23); a written request seeking continuation of child support is submitted to the court by a custodial parent prior to the child reaching age 19; or the child receiving support is in an out-of-home placement through the Division of Child Protection and Permanency in the Department of Children and Families. Certain circumstances would also allow a custodial parent to seek child support beyond the age of 19, including cases in which the child is still enrolled in high school or another secondary educational program; is a full-time student in a post-secondary education program for part of any five months in a year; has a physical or mental disability determined by a state or federal agency; or when other exceptional circumstances exist as approved by the court.

The new law, the Termination of Child Support Statute, *N.J.S.A. 2A:17-56.67*, was signed into law on January 19, 2016 by Governor Christie and went into effect on February 1, 2017.

- [Senate Bill 172](#), introduced by **Montana** State Senator Mike Lang, would bar any person owing child support from buying a hunting, fishing, or trapping license.
- The privatized Medicaid program, known in the state of **Kansas** as [Kancaid](#), [has been described by federal officials as having failed to meet federal standards](#) and as risking the health and safety of enrollees. The federal

Centers for Medicare and Medicaid Services found the Kancaid program to be “substantively out of compliance” with US law and regulations. The failures were significant enough to warrant a rejection of the state’s request to extend the program through December 2018. Kansas privatized its \$3.4 billion Medicaid program in 2012 at the urging of Governor Brownback. The privatization shifted most responsibilities for providing services to three private managed-care organizations (MCOs). Among the problems identified by CMS:

- “significant compliance deficiencies,” including MCOs requesting participants sign incomplete forms without the number of hours or types of services they would receive;
- evidence of MCOs revising plans without the participant’s input; and
- MCOs failing to ensure provider signatures on plans as required.

The state is planning to address the issues identified in the report and reapply for an extension of the program from the Trump administration later this year.

- The federal Centers for Medicare and Medicaid Services (CMS) has found that **Alabama state officials have been routinely rejecting people eligible for Medicaid coverage** when they have engaged in some form of fraud or abuse for which they were not convicted. State officials would not just reject these applicants, but would then seek to recover funds from them.

Alabama officials say they are trying to take action against those who lie on their applications about having been previously accused of criminal activity, but appropriate action in such cases is to refer them to law enforcement for investigation. If the practice is not changed within a short timeframe, Alabama stands to lose an increasing share of federal administrative Medicaid funding. A budget crisis in the state has already lengthened waits for care for Medicaid beneficiaries.

Also Of Note

- The US Supreme Court has **condemned race-based testimony in sentencing**, in a death-row case in which a psychologist had testified that the defendant, Duane Buck, was statistically more likely to commit violent acts because of he was black. The jury had subsequently concluded that Buck should be executed for the 1995 murders of his former girlfriend and another man, and their deliberations focused on whether Buck was likely to be violent in the future.

The Supreme Court described the prospect that Buck “may have been sentenced to death in part because of his race” as “a disturbing departure from a basic premise of our criminal justice system.” The court’s ruling states: “When a jury hears expert testimony that expressly makes a defendant’s race directly pertinent on the question of life or death, the impact of that evidence cannot be

measured simply by how much air time it received at trial or how many pages it occupied in the record. Some toxins can be deadly in small doses.”

The ruling sends the case back to the lower courts for additional proceedings that are likely to lead to a new sentencing hearing.

- A [Maryland auto-repair business owner has donated his entire business to Vehicles for Change](#), a non-profit program in Baltimore that repairs donated cars and awards them to low-income families at minimal cost. The nonprofit plans to maintain the business in its current location and use the property as an extension of its re-entry program that trains ex-prisoners to become auto mechanics. The cars serve to help low-income families get to jobs and have better job options. Vehicles for Change has awarded more than 5,000 cars since it began its car donation program in 2015 at an average cost of \$900 with a 12-month loan and a six-month warranty. The 18-month-old training program, which will now have a repair shop to work from, has so far placed 30 graduates into jobs. Another 14 are in training, working 40 hours per week and earning \$8.50 an hour. Ninety-five percent of the participants begin training directly out of prisons.